

OPINION
55-37

October 26, 1955 (OPINION)

COUNTIES

RE: Real Property - Cancellation of Land Contracts

This is in reply to your letter of October 21, 1955 requesting an opinion of this office on cancellation of county contracts for sale of land, under the provisions of subsection 3 of section 57-2815 of the North Dakota Revised Code of 1943.

The pertinent of subsection 3 of section 57-2815 states:

"Such contract shall be in such form as the State Tax Commissioner may prescribe and shall give the county the right upon any default of the purchaser to cancel the contract by resolution, and due notice thereof to the purchaser."

Nowhere in the statute is "due notice" further defined, nor do we find any other statute further specifying the terms of such county land contracts or the method of cancellation thereof.

The original statute of such cancellation was much clearer in this respect. Section 2 of chapter 288 of the 1931 Session Laws provided in so far as here applicable:

"* * * Such contract shall be in the usual form and shall give the county the right upon failure to comply with all of the terms and conditions of said contract by the purchaser, to cancel the said contract in manner and form now provided for by law between private individuals. * * *."

We find no reason to assume that the 1941 repeal of this former statute and enactment of the present statute was designed to give other than the usual contract right of cancellation to the county. It would rather appear that the intention of the Legislature was to establish uniformity in the contracts used by counties and to make sure that such contracts would contain a right of cancellation provisions. It is therefore our opinion that "due notice" as used in subsection 3 of section 57-1815 of the North Dakota Revised Code of 1943 refers to the one year notice prescribed by chapter 32-18 of the North Dakota Revised Code of 1943 and that, if the county elects to proceed to terminate the contract by resolution of cancellation and due notice, such one year notice must be given to the contract purchaser.

LESLIE R. BURGUM

Attorney General